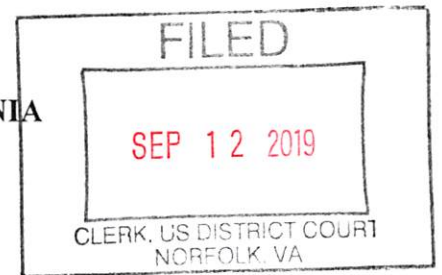


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



WILLIAM ORLANDO SMITH, #1128679,

Petitioner,

v.

ACTION NO. 2:19cv295

HAROLD W. CLARKE,
Director of the Virginia
Department of Corrections,

Respondent.

FINAL ORDER

Petitioner William Orlando Smith ("Smith"), a Virginia inmate, submitted a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. ECF No. 1. Smith attacks his convictions, in the Circuit Court for the County of Chesterfield on December 29, 2004, for rape and abduction. *Id.* at 1. On March 29, 2005, the circuit court sentenced Smith to 45 years in prison with 5 years suspended. *Id.*


The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Local Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report and recommendation, filed August 5, 2019, recommends that Smith's petition be dismissed without prejudice to Smith refiling his federal petition after obtaining an order authorizing the filing of a successive petition from the Court of Appeals for the Fourth Circuit. ECF No. 5. Each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On August 19, 2019, Smith filed his objections to the report and recommendation. ECF No. 7.

The Court does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that the petition for a writ of habeas corpus, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE** to Smith refiling his federal petition after obtaining an order authorizing the filing of a successive petition from the Court of Appeals for the Fourth Circuit.

Finding that the basis for dismissal of Smith's § 2254 petition is not debatable, and alternatively finding that Smith has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts.; *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Smith is **ADVISED** that, because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts. If Smith intends to seek a certificate of appealability from the Fourth Circuit, he must do so **within thirty days** from the date of this Order. Smith may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall mail a copy of this final order to Smith and counsel of record for respondent.



Raymond A. Jackson
United States District Judge

Raymond A. Jackson
United States District Judge

Norfolk, Virginia
September 12, 2019